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QUARTERLY REPORT

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The **Quarterly Report** provides information to the Indiana State Board of Education on recent judicial and administrative decisions affecting publicly funded education. Should anyone wish to have a copy of any decision noted herein, please call Kevin C. McDowell, General Counsel, at (317) 232-6676.

In this report:

PAROCHIAL SCHOOL STUDENTS WITH DISABILITIES

In K.R. by M.R. v. Anderson Community School Corporation, 887 F. Supp. 1217 (S.D. Ind. 1995), the school corporation declined to provide an instructional assistant for K.R. at a local parochial school. K.R. has physical disabilities and is a wheelchair user. The school based its decision in part on 511 IAC 7-4-4(c), which states:

> (c) At the election of the public school corporation, special education and related services may be provided at: (1) the private school or facility; (2) the public school; or (3) a neutral site.

The parents claim the school's refusal to provide an instructional assistant at the parochial school violated their First Amendment right to free exercise of religion and also violated the Religious Freedom Restoration Act, 42 U.S.C. §§2000bb-2000bb-4.

The school acknowledged the need for an instructional assistant, and offered to provide one if the student were enrolled in a public school. The school also alleged there were safety concerns with the parochial school and that providing the instructional assistant at a parochial school would violate Article I, Sec. 6 of the Indiana Constitution, which prohibits expenditures of public funds for the benefit of religious institutions.[1]

The court, in determining that the school corporation was obligated to provide the instructional assistant for K.R. at the parochial school, relied not upon the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. Part 300, but upon the federal regulations for state-administered programs, 34 C.F.R. Part 76. 34 C.F.R. §76.654(a) requires that subgrantees (for IDEA purposes, public school corporations) provide to students enrolled in private schools program benefits which are "comparable in quality, scope, and opportunity" as provided to public school students (at 1222).

This interpretation of 34 C.F.R. §76.654 is at odds with Goodall v. Stafford County Sch. Bd., 930 F.2d 363 (4th Cir. 1991) and interpretations by the U.S. Department of Education. The Goodall court stated that the parents' election to place their hearing impaired child in a parochial school did not obligate the school district to provide an interpreter for the student at the parochial school.[2]

The State Board's regulation at 511 IAC 7-4-4(c) is based upon federal interpretations which require that public schools provide to private school students with disabilities "genuine opportunities for

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[1]This latter argument conflicted with the school's earlier reliance upon 511 IAC 7-4-4(c), which the school admitted gave them the discretion to provide services on the grounds of the parochial school. The court noted that the provision of such services to students, as distinguished from providing direct support to a religious institution, does not violate the U.S. Constitution either. Zobrest v. Catalina Foothills Sch. Dist., _____ U.S. _____, 113 S. Ct. 2462 (1993).

[2]The 4th Circuit recently upheld the decision of the same school district not to provide a cued-speech transliterator to the same hearing-impaired student. Goodall v. Stafford County School Board, 60 F.3d 168 (4th Cir. 1995).

equitable participation" in special education and related services. As recently as August 16, 1995, the Office of Special Education Programs (OSEP) reiterated its past policies, adding that parents of private school students did not have a right to initiate due process over a school district's refusal to provide a related service. Letter to Champagne, 22 IDELR 1136 (OSEP, 1995).[3]

The district court has not invalidated the State Board's rule, but the thrust of the decision is that public school corporations can exercise discretion permitted by 511 IAC 7-4-4(c) except where such exercise of discretion would result in service delivery essentially meaningless to the student unless provided at the student's parochial school.

Notwithstanding this, two other federal district courts have followed the Anderson decision:

1. Russman by Russman v. Bd. of Ed. of the Enlarged Sch. Dist. of Watervliet, 22 IDELR 1028 (N.D. N.Y. 1995). The school district is required to provide the services of a consultant teacher and a teaching aide to an 11-year-old child with mental retardation at her parochial school in order for her to receive benefits comparable to those she would receive in a public school.

2. Cefalu ex rel. Cefalu v. East Baton Rouge School Bd., 22 IDELR 1045 (M.D. La. 1995). School board was required to provide a sign language interpreter for a 14-year-old student with a hearing impairment at the parochial school.

The Anderson Community School Corporation has appealed the district court's decision to the 7th Circuit. The U.S. Department of Education has been granted leave to file an *amicus* brief. Because this action is pending, I will defer to the next **Quarterly Report** a discussion on Zobrest v. Catalina Foothills Sch. Dist., _____ U.S. _____, 113 S. Ct. 2462 (1993), which will have some bearing on the 7th Circuit's analysis of the K.R. decision.

DRESS CODE

The Indiana General Assembly amended I.C. 20-8.1-5.1-7(a) to permit public school corporations to develop "appropriate dress codes." There is no additional legislative guidance. P.L. 61-1995, Sec. 3.

In Hines v. Caston School Corporation, 651 N.E.2d 330 (Ind. App. 1995), the Indiana Court of Appeals upheld the effect and application of local community standards in the development and implementation of a dress code. In this case, the dress code prohibited males from wearing earrings in school. The community considered earrings to be female attire. The court rejected some of the school's arguments for its dress code proscription against the wearing of earrings. The court did not accept arguments that earrings worn by males encourage cults, gangs or homosexuality. In fact, the

[3]The Office for Civil Rights (OCR) has previously determined that Sec. 504 and Title II of the A.D.A. do not require public school districts to provide services in private schools for students placed there unilaterally. Hinds County (MS) Sch. Dist., 20 IDELR 1175 (OCR 1993).

court at footnote 6 indicated "To the extent that the wearing of an earring is an expression of sexual orientation, it may be a protected form of speech, but we are not presented with that question here" (at 335). However, the court did accept the school's assertion that its ban would reduce rebelliousness, disrespect for authority, and disrespect for discipline within the school by maintaining "a basic standard for the children to live by" (Id.).

> It is reasonable that a community's schools be permitted, within constitutional strictures, to reflect its values, and it is a valid educational function to instill discipline and create a positive educational environment by means of a reasonable, consistently applied dress code. Under a due process standard, this is sufficient to show a rational relationship between the rule and some purpose within the school's competence.

The court agreed with the dissenting opinion that school officials "should not be in the business of dictating the standards of the community" (at 339). However, the majority noted that "school board members are elected officials charged by their constituents with the responsibility to 'make decisions pertaining to the general conduct of the schools.' I.C. 20-4-8-11(a)." (id., at 335, footnote 7). The court added:

> The formulating of standards of appearance for children in schools is an aspect of their responsibility, and such decisions cannot be made without reference to community standards, as imprecise and changeable as such standards may be. In the present case, the school board did not dictate community standards but formulated school policy in response to expressions of the community's will.
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> More importantly, perhaps, we believe that it is not the business of the courts to determine community standards or to become arbiters of acceptable fashion in the public schools.

It is noteworthy that the majority opinion did not require that there actually be a demonstrated interference or interruption of the educational function before there would be justification for a dress code.

Also see:

1. Barber v. Colorado Ind. School Dist., 901 S.W.2d 447 (Tex. 1995). The school district had a grooming and hygiene dress code which, in part, stated: "Boys may wear hair to the bottom of the collar, the bottom of the ear and combed out of the eyes. Boys may not wear earrings of any kind." The plaintiff challenged the application of the dress code proscriptions to adult male students. The plaintiff also complained the dress code resulted in gender-based discrimination by not applying to female students. (This issue was also raised in Hines.) The Texas Supreme Court declined to entertain the plaintiff's complaint, noting that "We

refuse to use the Texas Constitution to micro-manage Texas high schools" (at 447). There are two lengthy dissenting opinions.

2. Pyle v. The South Hadley School Committee, 55 F.3d 20 (1st Cir. 1995). This is a continuing dispute involving the extent to which a school may regulate student attire. (In this case, tee-shirts with comments or designs which are considered obscene, lewd or vulgar are at issue. The student wore to school a tee-shirt which read "Coed Naked Band: Do It to the Rhythm.") The school originally had no policy; but once it developed one, plaintiff and his brother--with encouragement from their father, a professor of constitutional law--"signaled their opposition by sporting a series of shirts emblazoned with messages deliberately calibrated to test the mettle and sweep of the school's enforcement authority" (at 21). The "tee-shirt turmoil," as the court called it, has not caused any disruption or disorder within the school. Plaintiffs acknowledge the First Amendment does not protect speech which is obscene, defamatory, considered "fighting words," calculated to incite and is disruptive. The federal district court in Pyle v. The South Hadley School Committee, 861 F.Supp. 157 (D. Mass 1994), found that neither Massachusetts statute nor the First Amendment prevents the School from prohibiting clothing exhibiting messages school officials reasonably consider obscene, lewd or vulgar, even if sporting such clothing causes no disruption or disorder. The Circuit Court certified the question of state law to Supreme Judicial Court of Massachusetts regarding whether state law permits students "to engage in non-school-sponsored expression that may reasonably be considered vulgar, but causes no disruption or disorder?" (At 22). The circuit court held in abeyance any decision regarding the First Amendment until the state court answers the state law question.

3. Baxter v. Vigo County School Corp., 26 F.3d 728 (7th Cir. 1994). Plaintiffs had complained to the school concerning grades, alleged racism and other unspecified policies at Lost Creek Elementary School. Their daughter began to wear tee-shirts which read "Unfair Grades," "Racism," and "I Hate Lost Creek." The principal prohibited the student from wearing these tee-shirts, an action plaintiffs asserted violated the student's right to freedom of speech by preventing her from speaking out on matters of public concern. The federal district court dismissed the complaint. The 7th Circuit upheld the dismissal, noting that the student is an elementary school student and that her age is a relevant factor when determining the extent to which self-expression is to be abridged (at 738).

INDIANA BOARD OF SPECIAL EDUCATION APPEALS

In Johnson et al. v. Duneland School Corporation et al., No. 2:93 cv 191JM (N.D. Ind. 1995) (slip opinion), the federal district court addressed a number of issues raised by plaintiffs regarding the procedures of the Indiana Board of Special Education Appeals (see 511 IAC 7-15-6). The due process hearing was an acrimonious affair. This did not abate upon appeal. Neither party would request an extension of time so the full Board could meet and entertain oral argument. As a consequence, only two of the three members were present. (The Board has always maintained review could occur with only two members, but any decision must be unanimous. Neither the Board

nor an Independent Hearing Officer under 511 IAC 7-15-5 can continue an appeal or hearing except at the request of a party.) The following determinations of the court are of interest:

1. Interlocutory Appeal. The Board has refused in the past to consider interlocutory appeals, asserting that its review authority extends only to final orders and not to interim decisions. See Recent Decisions 1-12:94 and Recent Decisions 1-12:92. In this case, the parents asked the Independent Hearing Officer (IHO) to disqualify herself. She refused. The Board considers such decisions as interim, reviewable only after jurisdiction is relinquished and only under the state and federal requirement to determine whether due process procedures were followed. See 511 IAC 7-15-6(k) and 34 CFR §300.510(b)(2). The plaintiffs failed to raise the disqualification issue on appeal to the Board, and the court ruled they were foreclosed from doing so now (at 20).

2. Oral Argument. The Board, following oral argument, will ask questions of those present in order to clarify the Board's understanding of the record, which they are required to review prior to oral argument. The plaintiffs argued this constituted the taking of evidence. The plaintiffs also complained that the presence of only two Board members denied them due process. The court found no merit in these arguments, noting that federal law does not indicate how many review members are required. Additionally, "[T]he court agrees with the BSEA that questioning the parties themselves regarding the appeal should not be deemed the taking of additional evidence." Further, the court noted that plaintiffs were represented at appeal by two attorneys and an advocate, none of whom objected to the Board's procedures (at pp. 21-22). The court granted the school corporation's and the Board's Motions for Summary Judgment.

TEACHER LICENSE SUSPENSION/REVOCATION

The Indiana Professional Standards Board (IPSB), on September 21, 1995, decided In the Matter of L.A.N., Cause No. 940826074 (IPSB 1995). With this decision, the IPSB answered two questions involving the relationship between revocation actions and IPSB regulatory authority. While the IPSB is given the authority to adopt rules to suspend, revoke or reinstate teacher licenses under I.C. 20-1-1.4-7(4), the General Assembly reserved the authority to initiate revocation actions to the State Superintendent of Public Instruction (I.C. 20-6.1-3-7). The General Assembly has not indicated what type of suspension authority the IPSB has. The State Superintendent can only suspend a teacher license for one year for unprofessional conduct due to inappropriate cancellation of contract. In this case, the teacher experienced tremendous personal problems, including the death of his wife of twenty years, leaving him with three daughters. He later became involved with another woman who was embroiled in a divorce/custody battle with her estranged husband. During this period, a police informant suggested a plot to plant drugs on the estranged husband. Although the teacher initially rebutted the suggestion, he eventually acceded. This resulted in his arrest. In a plea agreement, he agreed not to teach in a public school for ten years. A revocation action ensued. The IPSB elected not to revoke the teacher's license but to suspend it due, in no small part, to the testimony of teachers who knew him before, during and after the occurrence which lead to his arrest. The IPSB noted that the State Superintendent can initiate a revocation action, but the IPSB can

independently determine a lesser penalty. The IPSB can initiate a suspension proceeding on its own but cannot convert this to a revocation action.

The second question answered is in regard to the effect of the plea agreement. The IPSB held that plea agreements do not have preclusive effect in IPSB suspension/revocation actions.

Also see:

1. In the Matter of D.L.D., Cause No. 950601082 (IPSB 1995), decided the same day as L.A.N. This case involved an applicant for a substitute teaching certificate. Petitioner, as a result of a neck injury, became addicted to prescription pain medication. This resulted in felony convictions for forging prescriptions. Petitioner has successfully complied with the terms of his probation. He is working two jobs, has passed three drug tests, continues to attend rehabilitation meetings, and by all accounts is a hard-working, reliable person. However, the IPSB declined to grant his request because he is still on probation. The IPSB has previously declined to reinstate a revoked license while the petitioner was on probation.

2. Toney v. Fairbanks North Star Borough School Dist., 881 P.2d 112 (Alaska 1994). Teacher was terminated on the grounds of immorality, although the complained-of activity occurred in Idaho many years earlier and the teacher had never been convicted. The teacher had impregnated a 15-year-old girl in Idaho in 1981. Although arrested and charged with a felony (lewd conduct), he reached a compromise with the girl's father regarding payment of medical expenses and resignation from teaching at the school. The teacher applied to the Alaska school, but did not report the incident and falsely represented he was employed full-time at the Idaho school district. In 1992, the girl informed the Alaska school what had transpired in 1981. The school terminated the teacher and the court upheld the termination. The Alaska court noted that a teacher may be dismissed for "immorality, which is defined as the commission of an act that, under the laws of the state, constitutes a crime involving moral turpitude." The court rejected the need for a separate showing of nexus. "[I]t is well established that there need not be a separate showing of a nexus between the act or acts of moral turpitude and the teacher's fitness or capacity to perform his duties...If a teacher cannot abide by these standards, his or her fitness as a teacher is necessarily called into question."

RESIDENTIAL PLACEMENT: JUDICIAL AUTHORITY

The State Superintendent of Public Instruction is authorized to contract with public and private facilities for residential placements for educational reasons (I.C. 20-1-6-19, which serves as the basis for 511 IAC 7-12-5). The Indiana Department of Education has long maintained that this statute does not confer upon a court jurisdiction over IDOE except upon judicial review, as provided by 511 IAC 7-15-6(p), I.C. 4-21.5-5. Nonetheless, a juvenile court attempted to order IDOE to pay the cost of a residential placement for an autistic child whom the court had declared a Child In Need of Services (CHINS).

In In Re E.I., 653 N.E.2d 503 (Ind. App. 1995), the Indiana Court of Appeals agreed with IDOE, holding that IDOE is not a proper party for a CHINS action, and that the court had no authority to order IDOE to pay any of the costs of the child's placement (at 510, 512). The court noted at 512, footnote 4, that E.I.'s status as a CHINS does not affect his entitlement to special education services. IDOE had argued that 511 IAC 7-12-5 and I.C. 20-1-6-19 directed IDOE in this respect. IDOE did not need a court to order it to do what it already does. The Court of Appeals noted this and also addressed alternative or "wraparound" services. "Eligibility for such funding is based upon need and is unaffected by an adjudication that child is a child in need of services." The court was ordered to grant IDOE's Motion to Dismiss.

It is noteworthy that IDOE through the Division of Special Education did provide funding for alternative services for E.I. during the period IDOE was challenging the juvenile court's jurisdiction. E.I. received, in conjunction with services from his school corporation and FSSA, a support specialist and specialized teaching assistance for 1994-1995; and a behavioral instructional assistant, home-school liaison, and home-based services for 1995-96.

Also see:

1. In re Roger S., 658 A.2d 696 (Md. 1995). In a situation similar to In re E.I., *supra*, the student had significant disabilities, including diabetes and autism. The court declared him to be a "Child In Need of Assistance," which is similar to CHINS. He received his high school diploma from the local school board, but the school board declined to provide transition services into a working environment, which the child's foster parents requested. The matter was submitted to due process under special education. The school board prevailed, although it did continue to provide services throughout the exhaustion of administrative proceedings. The local County Department of Social services was able to obtain an order from the juvenile court, committing him, in part, to the school district and ordering further educational/transitional services until the child turned 21. The Maryland Court of Appeals vacated the lower court's order, noting that schools do not have custodial or guardianship functions (at 699), nor did the court have authority to order the school to provide educational services (at 700). Juvenile court proceedings are not to usurp special education administrative framework, including its procedural safeguards and due process (at 700).

2. State Ex Rel. B.C., 610 So.2d 204 (La. App. 1992). The juvenile court adjudicated a student with disabilities as a delinquent and a Child In Need of Supervision (CINS). As a condition of probation, the court ordered the student placed on homebound instruction for four years, with educational services provided by the student's school district. The student challenged the homebound placement as violating IDEA. The juvenile court, however, stated that IDEA does not apply to a juvenile court judgment ordering a student to be educated in a residential setting. By all accounts, the student was disruptive and disrespectful, often engaging in thug-like behavior toward other students. The school district did not contest the four-year homebound instruction ordered by the court.

SCHOOL CONSTRUCTION

In Recent Decisions 1-12:94 there was a discussion on school construction cases, notably Chester Bell et al. v. Clay Community School Corporation, Cause No. 9312025 (SBOE 1994), which was dismissed by Marion County Superior Court No. 7 at the motion of the school and the Indiana Department of Education. Plaintiffs then sought review of the decision of the Indiana State Board of Education (ISBOE) before the State Board of Tax Commissioners. The State Board of Tax Commissioners (SBTC) refused to review the actions of ISBOE, and approved on April 13, 1995, a lease rental agreement between Clay Community Schools and the North Clay Middle School Building Corporation for the Construction of a new middle school. Plaintiffs appealed the decision of the SBTC to the IndianaTax Court. The Tax Court, in Chester Bell et al. v. State Board of Tax Commissioners, 651 N.E.2d 816 (Ind. Tax 1995), indicated that the SBTC is not empowered to inquire into the propriety of actions taken by school corporations, the Indiana Department of Education, and the ISBOE. "[N]o administrative agency has the prerogative to make decisions properly committed to any other agency" (at 819). A state agency may consider the decisions of other state agencies, and it may presume that the actions of other administrative agencies were in accord with Indiana law (at 820). The Tax Court also found that plaintiffs as remonstrators failed to raise any substantial question with regard to the necessity of the construction project or the reasonableness of rental payments. Accordingly, the court ordered plaintiff-remonstrators to post bond in the amount of $1,099,071 within ten days or the case would be dismissed. (Plaintiff-remonstrators did not post the bond and the case was dismissed. Plaintiff-remonstrators have now sought transfer to the Indiana Supreme Court.)

Also see:

1. Taxpayers Watch Group et al. v. Bartholomew Consolidated School Corporation et al., 654 N.E.2d 320, (Ind. Tax 1995). Citing to Chester Bell, *supra*, the Tax Court required remonstrators against the approval of a lease rental agreement for the renovations and additions to the four elementary schools to post a bond in the amount of $4.33 million or have their case dismissed. They failed to do so and the matter was dismissed (August 14, 1995). In order to avoid the posting of a bond under I.C. 34-4-17-5 (Public Lawsuit Act), the remonstrators must introduce evidence sufficient to show there is a substantial question to be tried. In this case, the court did not agree that the cost of the project in and of itself excuses the posting of a bond. The court also rejected procedural complaints against the SBTC for not following the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5. The Tax Court noted that the SBTC is not required to follow the AOPA. I.C. 4-21.5-2-4(10).

ATTORNEY FEES: SPECIAL EDUCATION

Quarterly Report Jan. - Mar. 1995 contained a discussion on a pending matter before the 7th Circuit Court of Appeals. The 7th Circuit did decide the matter on July 28, 1995, upholding the Indiana Department of Education's assertion that the 30 calendar day timeline for seeking judicial review of an administrative decision under I.C. 4-21.5-5-5 applies as well to requests for attorney fees under 20 U.S.C. §1415(e) of IDEA.

In Powers v. The Indiana Department of Education, 61 F.3d 552 (7th Cir. 1995), the court upheld the lower court's granting of summary judgment but with some reservations: (1) this decision applies to circumstances where parents are represented by attorneys, and (2) agencies have a general responsibility under IDEA to give clear notice of the availability of judicial review and of limitation periods for seeking such review.

The parent's attorney was not informed of judicial review because the request for attorney fees was made following a mediation and not a due process hearing. There isn't judicial review for mediation, a voluntary process under 511 IAC 7-15-3. The question is still unresolved whether mediation is to be considered an "action or proceeding" under IDEA such that a parent would be entitled to attorney fees.

The Powers decision holds that the thirty (30) calendar day time line under I.C. 4-21.5-5-5 will apply to request for attorney fees under IDEA and 511 IAC 7-15-5, 7-15-6. The plaintiff's attorney's delay of over seven months before initiating judicial action was not timely.

Also see:

1. Zipperer v. School Board of Seminole County, Fla., 891 F. Supp. 583 (M.D. Fla. 1995). Court indicated that Florida's thirty (30) day statute of limitations would apply to a student's request for attorney fees where the student was a prevailing party in an IDEA hearing. As a consequence, the four-year delay in pursuing attorney fees was untimely. The school board's Motion for Summary Judgment was granted.

2. Curtis v. Sioux City Comm. Sch. Dist., 1995 WL 389327 (N.D. Iowa 1995). Court refused to apply the thirty-day timeline for judicial review of administrative decisions to an IDEA request for attorney fees, finding the time period too short. Instead, the court would apply Iowa's two-year statute of limitations for personal injury actions or the five-year statute of limitations for all actions not covered by any other statute.

COURT JESTERS

A threshold question in any court is whether or not the court has jurisdiction in the matter. Such jurisdictional matters rarely involve the incorporeal beings in ethereal realms. Nonetheless, a court had to address this in U.S. ex rel. Gerald Mayo v. Satan and His Staff, 54 F.R.D. 282 (W.D. Pa. 1971). The plaintiff, proceeding *pro se*, attempted to file a civil rights action against Satan and his servants, alleging "that Satan has on numerous occasions caused plaintiff misery and unwarranted threats, against the will of plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff's downfall" (at 283). This has, in plaintiff's view, deprived him of his constitutional rights. Judge Weber questioned "whether plaintiff may obtain personal jurisdiction" in his district because Satan maintains no residence there nor has Satan ever appeared in a court in the district. But while Satan has never appeared (in any official accounts) in Pennsylvania, "there is an unofficial account of a trial in New Hampshire where this defendant filed an action of mortgage foreclosure as plaintiff. The defendant in that action was represented by the preeminent advocate of that day,

and raised the defense that the plaintiff was a foreign prince with no standing to sue in an American court. This defense was overcome by overwhelming evidence to the contrary."[4] However, since the plaintiff did not provide the U.S. Marshal with directions so as to serve notice upon Satan, the prayer was denied. Plaintiff apparently will just have to go to...well...some place really hot if he wants to prosecute his claim.

UPDATED CITATIONS

1. Vernonia School District 47J v. Acton, _____ U.S. _____, 115 S. Ct. 2386 (1995). This is the drug testing case discussed in **Quarterly Report** Apr.- Jun. 1995, p.8.

2. Missouri v. Jenkins, _____ U.S. _____, 115 S. Ct. 2038 (1995). This is the desegregation case discussed in **Quarterly Report** Apr. - Jun. 1995, p.2.

UPDATED CASES

In **Quarterly Report** Jan - Mar 1995, a federal district court decision in Nebraska upheld the locally developed method for distributing bibles by The Gideon International Oganization. In Schanou v. Lancaster County Sch. Dist. No. 160, 62 F.3d 1040 (8th Cir. 1995), the Circuit Court of Appeals vacated the decision of the district court, finding that the claim was not timely prosecuted and should be dismissed.

QUOTABLE...

"Statistics are not, of course, the whole answer, but nothing is as emphatic as zero...."

U.S. v. Hinds County School Board, 417 F.2d 852, 858 (5th Cir. 1969), cert. den. 396 U.S.1032, 90 S.Ct. 612 (1970), rejected the school district's continued use of a "freedom of choice" program as a means of disestablishing dual school systems. Despite the plan, no white students enrolled in any all-black schools and the dual systems remained.

Date: _____ _____

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[4]See "The Devil and Daniel Webster" by Stephen Vincent Benét (1937).